

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

THOMAS UNGER,

PETITIONER

v.

No. 4:06CV17-M-B

RULEVILLE POLICE DEPT./MDOC

RESPONDENTS

MEMORANDUM OPINION

This matter comes before the court on the *pro se* petition of Thomas Unger for a writ of *habeas corpus* under 28 U.S.C. § 2254. The state has moved to dismiss the instant petition as moot. The petitioner has not responded. The matter is ripe for resolution. For the reasons set forth below, the instant petition for a writ of *habeas corpus* shall be dismissed as moot.

Discussion

Thomas Unger was convicted of sale of cocaine by the Sunflower County Circuit Court on August 12, 1996, and sentenced to a suspended term of ten years with three years of probation under the supervision of the Mississippi Department of Corrections (“MDOC”). The circuit court revoked Unger’s probation on September 29, 1999, and sentenced him to serve ten years in the custody of MDOC. *Id.* Unger was released November 5, 2004, on Earned Release Supervision by the MDOC. On September 6, 2005, however, he was arrested for house burglary, and on November 18, 2005, his Earned Release Supervision was revoked by MDOC. *Id.* Unger filed the instant petition for a writ of *habeas corpus* January 24, 2006. According to MDOC’s Department of Records, Unger was discharged from custody on September 6, 2006.

Three of Unger’s claims in his *habeas corpus* petition go to the merits of his arrest for the house burglary on which the revocation of earned release supervision was based. These claims

are, however, premature because Unger has not been indicted for house burglary and is not presently restrained or “in custody” as a result of his arrest on that charge. 28 U.S.C. §§ 2241, 2254. Unger has been discharged from the custody of the MDOC. As such, he has already achieved the maximum relief this court could grant in his case. Therefore, the instant petition for a writ of *habeas corpus* has become moot and shall be dismissed for that reason. A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 20th day of March, 2007.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE